

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

R.N., By and Through Her
Parent, R.T. and R.T. Individually,

Plaintiffs,

v.

1:19-CV-1922

FRANKLIN COMMUNITY SCHOOL CORPORATION and
THE BOARD OF SCHOOL TRUSTEES OF THE FRANKLIN
COMMUNITY SCHOOL CORPORATION,

Demand for Jury Trial

Defendants.

COMPLAINT

Plaintiffs, by counsel and for their Complaint against Defendants, allege:

Preliminary Statement

Plaintiff R.T. brings this action seeking redress for harms suffered by her disabled daughter, Plaintiff R.N., who was subjected to discrimination, bullying and harassment¹ as a result of Defendants' intentional, knowing, deliberately indifferent, reckless and/or negligent acts and omissions. Defendants have a policy, custom or practice of not addressing student-on-student harassment in their schools, particularly when the victims are students with disabilities, by failing to prevent or stop it from occurring even in the face of actual knowledge that it was occurring. Specifically, Defendants created, fostered or permitted a hostile environment to exist in R.N.'s school that deprived her of educational opportunities and benefits on the basis of her disability.

¹ Plaintiffs use the terms bullying and harassment interchangeably.

Parties

Plaintiffs

1. Plaintiff R.N. is a 14-year old girl who resides with her mother (Plaintiff R.T.) and stepfather² in Franklin, Indiana. R.N. has a disability which adversely affects her educational performance and is eligible for special education and related services under Autism Spectrum Disorder (primary) and Language Impairment. R.N. is a “child with a disability” as that term is defined by applicable federal law, including but not limited to 20 U.S.C. § 1401(3)(A); 34 CFR § 300.8.³ She has been diagnosed with depression and Attention Deficit Hyperactivity Disorder (ADHD) and takes prescription medication to manage her symptoms. As R.N.’s parent, R.T. is responsible for R.N.’s medical expenses.
2. R.N. attends public school and at all relevant times attended schools owned, operated, maintained, staffed and funded by Defendants and was transported to and from school on buses owned or operated by Defendants.
3. Because of her disability, R.N. receives special education and related services through Defendants’ schools.

Defendants

4. Defendant Franklin Community School Corporation (“the District”) is an Indiana public school corporation which receives federal financial assistance. Its principal office is in Johnson County, Indiana.

² For simplicity, they will be referred to as R.N.’s parents.

³ As explained below, R.N. also fits the relevant definitions under ADA and Section 504.

5. Defendant The Board of School Trustees of the Franklin Community School Corporation (“the Board”) is the governing body of the District. According to its Policy 0122, the Board has control of the District’s facilities, programs, employees and students.

Defendants’ Written Policies on Harassment and Bullying

6. The District’s policy 1662 provides, in pertinent part:

It is the policy of the Board of School Trustees to maintain an...environment that is free from all forms of unlawful harassment...occurring in the Corporation’s employment opportunities, programs, and/or activities, or...affecting the Corporation environment (hereinafter referred to collectively as “unlawful harassment”)...All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting any form of unlawful harassment...affecting the Corporation environment.

The Board will vigorously enforce its prohibition against unlawful harassment...which is based on...disability...or...classes protected by Federal and/or State civil rights laws (hereinafter referred to as “Protected Classes”), and encourages those within the Corporation community as well as third parties who feel aggrieved to seek assistance to rectify such problems....

All Corporation employees, including administrators, professional staff and support staff, shall report any incident of alleged unlawful harassment...affecting the Corporation environment that the employee observes or which is reported to the employee.

The Board will investigate all allegations of unlawful harassment...affecting the Corporation environment and, in those cases where unlawful harassment is substantiated, the Board will take immediate steps to end the harassment, prevent its recurrence, and remedy its effects....

7. District policy 1662 contains the following definitions:

Bullying

Bullying rises to the level of unlawful harassment...when one (1) or more persons systematically and chronically inflict physical hurt or psychological distress on one (1) or more students with the intent to harass, ridicule, humiliate, intimidate or harm that/those student(s), and that bullying is based upon sex, race, color, national origin, religion, or disability, that is, characteristics that are protected by Federal civil rights laws. It is defined as any unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual’s school performance or participation; and may involve: (a) teasing; (b) threats; (c) intimidation; (d) stalking; (e) cyberstalking; (f) cyberbullying; (g) physical violence; (h) sexual violence; (i) theft; (j) sexual, religious, or racial harassment; (k) public humiliation; or (l)

destruction of property. In the bullying context, "harassment" means any threatening, insulting, or dehumanizing gesture...or written, verbal or physical conduct directed against a student that: (a) places a student in reasonable fear of harm to his/her person or damage to his/her property; (b) has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or (c) has the effect of substantially disrupting the orderly operation of a school.

8. District policy 5517 provides, in pertinent part:

General Policy Statement

It is the policy of the Board of School Trustees to maintain an education...environment that is free from all forms of unlawful harassment...occurring in the Corporation's educational opportunities, programs, and/or activities....This commitment applies to all Corporation operations, educational opportunities, programs, and activities. All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting any form of unlawful harassment occurring in the Corporation's educational opportunities, programs, and/or activities....

The Board will vigorously enforce its prohibition against unlawful harassment...that is based on race, color, national origin, sex...religion, disability...or...classes protected by Federal and/or State civil rights laws...and encourages those...who feel aggrieved to seek assistance to rectify such problems...affecting the Corporation environment.

All Corporation employees...shall report any incident of alleged unlawful harassment...that the employee observes or which is reported to the employee.

The Corporation will investigate all allegations of unlawful harassment...and, in those cases where unlawful harassment is substantiated, will take immediate steps to end the harassment, prevent its recurrence, and remedy its effects.

Individuals who are found to have engaged in unlawful harassment...will be subject to appropriate disciplinary action, up to and including termination of employment or expulsion from school.

Furthermore, Corporation employees who fail to report any incident of alleged unlawful harassment...that the employee observes or which is reported to the employee also are subject to appropriate disciplinary action, up to and including termination of employment....

9. District policy 5517.01 provides, in pertinent part:

5517.01 - BULLYING

...Bullying behavior toward a student...is strictly prohibited and will not be tolerated. This prohibition includes physical, verbal, and psychological abuse as provided herein. The Board will not tolerate any gestures, comments, threats, or actions which cause or threaten to cause bodily harm or personal degradation....

Bullying as defined in State law means overt, unwanted, repeated acts or gestures, including verbal or written communications or images transmitted in any manner (including digitally or electronically), physical acts committed, aggression, or any other behaviors committed by a student or group of students against another student with the intent to harass, ridicule, humiliate, intimidate, or harm the other student and create for the targeted student an objectively hostile school environment that: (a) places the targeted student in reasonable harm to the targeted student's person or property; (b) has a substantially detrimental effect on the targeted student's physical or mental health; (c) has the effect of substantially interfering with the targeted student's academic performance; or (d) has the effect of substantially interfering with the targeted student's ability to participate in or benefit from the services, activities, and privileges provided by the school.

This type of behavior is a form of harassment, although it need not be based on any of the legally protected characteristics, such as sex, race, color, national origin, marital status, or disability. It includes, but is not limited to, such behaviors as stalking, intimidation, menacing behavior, coercion, name-calling, taunting, making threats, and hazing....

Any student who believes s/he has been or is currently the victim of bullying should immediately report the situation to the building principal or assistant principal or the Superintendent. The student also may report concerns to a teacher or counselor who will be responsible for notifying the appropriate administrator or Board official. This report may be made anonymously. A parent may file a complaint on behalf of a student in the same manner.

Every student is encouraged, and every staff member is required, to report any situation that they believe to be bullying behavior directed toward a student....

All complaints about bullying behavior that may violate this policy shall be promptly investigated according to the timeline established by the Superintendent's administrative guidelines.

If, during an investigation of reported acts of bullying and/or harassment, the investigator believes that the reported misconduct may have created a hostile learning environment and may have constituted unlawful discriminatory harassment based on sex, race, color, national origin, religion, or disability, the investigator will report the act of bullying and/or harassment to one (1) of the Compliance Officers so that it may be investigated in accordance with the procedures set forth in Policy 5517 – Anti-Harassment.

If the investigator finds an instance of bullying behavior has occurred, prompt and appropriate action or responses shall be taken to address the behavior wherever it occurs including, as appropriate, disciplinary action, up to and including expulsion for students.... Bullying acts shall be reported to law enforcement officials immediately upon determining that a report to law enforcement is necessary.

The parents of the targeted student and the reported bully shall be notified of the alleged bullying incident at the beginning of the investigation, the findings of the investigation at the conclusion of the investigation, and, as appropriate, any remedial action that has been or will be taken to the extent disclosure is permitted by law. In addition to discipline, remedial action may include support services for the targeted student and bullying education for the bully, among other actions.

Defendants' Actual Custom or Practice Relating to Harassment and Bullying

10. While Defendants' written policies purporting to condemn bullying and other forms of student-on-student harassment appear well-intentioned, unfortunately they are not reflected in the manner that Defendants address (or fail to address) the bullying which occurs in their schools on a regular basis—which supports a reasonable inference that Defendants either condone such conduct or are deliberately indifferent to its occurrence.
11. One of the reasons that a hostile educational environment is allowed to exist in Defendants' schools is because of their failure to properly train their employees on the implementation and enforcement of their own written policies, resulting in their employees' ignorance of those policies.
12. The need for school districts to train their employees on such policies is self-evident, even obvious.

13. Defendants' failure to train their employees on these policies constitutes deliberate indifference to R.N.'s civil rights, specifically including but not limited to her right to be educated in an environment which is not hostile.⁴
14. Defendants' deliberate indifference to the need to train their employees on these policies resulted in the deprivation of R.N.'s civil rights.
15. Defendants' custom or practice of not training their employees on their own written policies and their failure to take appropriate steps to address bullying in their schools amount to an official policy.

Jurisdiction

16. This Court has jurisdiction over Plaintiffs' claims arising under the Constitution or laws of the United States pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. Plaintiffs have exhausted their administrative remedies to the extent required⁵ and served timely Notices of Tort Claim pursuant to state law.

Venue

17. Venue is in this District pursuant 28 U.S.C. § 1391(b) because Defendants maintain their principal offices in this judicial district.

⁴ The identity of individual employee(s) of Defendants having final policymaking authority in this area is presently unknown. Once Plaintiffs ascertain the identity of such individuals through discovery, they reserve the right to amend the Complaint to name them as defendants.

⁵ By requesting a Due Process hearing asserting claims arising under the Individuals with Disabilities Education Act (IDEA).

Allegations Common to All Counts

18. Despite her disability, R.N. is a bright girl and wants what every child her age wants: to fit in, be accepted and liked. Unfortunately, she was the victim of a lengthy, severe and pervasive campaign of verbal and physical harassment by other students at school and on the school bus. Even more unfortunately, despite having actual knowledge that R.N. was being bullied and of the significant harmful effects which it was having upon R.N., Defendants looked the other way and failed to take appropriate measures to prevent or stop the bullying or discipline the perpetrators.
19. The other students' intentional or willful misconduct directed toward R.N. meets Defendants' definitions of harassment and bullying as well as Indiana law.
20. At all relevant times, Defendants had lawful disciplinary authority over the perpetrators because they were students on Defendants' property (school grounds or school buses) and the harassment occurred on school property during school hours. Therefore, Defendants exercised substantial control over the circumstances which led to the harassment and/or the conditions where the harassment was perpetrated.
21. One of the reasons, if not the main reason, that R.N. was targeted for bullying was because she has autism. As a result, she is perceived—and treated—by other students and by Defendants' employees as "different."
22. Upon information and belief, there is a longstanding and systemic bullying problem at schools operated by Defendants and the severity of the bullying is worse for students with disabilities than it is for their peers in general education.
23. Defendants' widespread custom or practice of allowing bullying in their schools has sent a message that students who harass their peers will not face serious consequences. This

has fostered a culture of passivity, even tolerance, on the part of school staff which leads students to engage in such conduct because they know that they can get away with it.

24. As a result of this institutional tolerance of bullying in their schools, since 2015 R.N. has been subjected to an ongoing campaign of bullying on Defendants' property, both at school and on the school bus.

25. Although bullying of any student is unacceptable, because of her disability R.N. belongs to a "protected class" as that term is defined by Defendants' own written policies and by federal and Indiana law.

26. R.N.'s treatment by other students at school and on the bus constitutes "unlawful harassment," "disability harassment" and "bullying" as those terms are defined by Defendants' own written policies and under federal and Indiana law.

27. In an effort to put a stop to the bullying, both R.N. and her parents reported the ongoing and repeated harassment of R.N. to the appropriate school personnel on numerous occasions pursuant to Defendants' written policy.

28. In addition to being teased and called names at school, R.N. was relentlessly tormented, physically kicked, punched and hit by other students. At school and on social media, other students would say things to her like "You should die," and one or more students told R.N. to "dig a hole and bury yourself," to die of cancer and go die in a fiery crash. Other students laughed at her, kicked her and told her that her mother was an "asshole" for having and loving a child like her.

29. Before she started being bullied by other students, R.N. used to love going to school, loved her teachers and looked forward to spending time at school every day. However,

the bullying created a hostile environment at school and on the school bus. As a result, R.N. no longer feels safe at school or on the school bus.

30. Eventually (and not surprisingly), the relentless campaign of harassment took its toll on R.N. It damaged her self-esteem and made her feel scared, helpless and depressed. She started coming home saying “I got bullied today,” on practically a daily basis. Her stomach hurt, she would be up worrying in the middle of the night about what the next day held and awakened her parents to tell them that she was afraid of being bullied the next day. She told them “I don't want to go to school,” and “I want to be home schooled.”
31. Defendants’ teachers and administrators (see fn. 3, *supra*) were aware that R.N. was being bullied but took no action as she slipped further into depression.
32. Defendants’ employees have known about this situation for years. When R.N. was in 5th grade, Defendants developed an Individualized Education Program (IEP) for her dated 1/26/16. In the “Concerns of the parent” section of the IEP, it states that R.N. comes home saying that she hates school, wants to be home schooled and that she “feels bullied.”
33. In addition to R.N.’s numerous reports of being bullied made to Defendants’ employees over a period of time, her parents have communicated with various school administrators and staff about the bullying on several occasions, including but not limited to sending at least two employees of Defendants an email on or about April 24, 2017 stating that R.N. “seems to have become a target this year more than any other school year,” that she was coming home and telling her parents that she had been bullied on a daily basis, that she was complaining of stomachaches and waking up in the middle of the night, that she was being subjected to “ongoing treatment by a select few students at school,” that the parents

had watched her cry and heard her say “I don’t feel like I want to live anymore” because someone had told her that she “should kill herself.”

34. On more than one occasion, the parents also explained to one or more of Defendants’ employees that R.N. had told them “I don’t want to go to school” or “I want to be home schooled,” that she had been up in the middle of the night and had awakened them with concerns about getting bullied the next day.

35. R.N.’s parents told Defendants that “we feel as if we are sending our child off to a war zone” every day when they sent her to school.

36. The parents also informed Defendants’ employees that “you have a bullying problem at your school,” and asked them what Defendants planned to do to keep R.N. safe.

37. On or about April 26, 2017, an employee of Defendants sent R.N.’s parent(s) an email mentioning “the 5 students who make her feel unsafe.”

38. Employees of Defendants (including school administrators with disciplinary authority) knew that R.N. was being bullied at school, yet they failed to take reasonable measures to prevent it or to stop it from happening.

39. In addition to the bullying causing or exacerbating R.N.’s symptoms of depression, R.N. developed a school-based anxiety disorder as a result of the harassment which she experienced at school.

40. R.N. had trouble sleeping and began having auditory and visual hallucinations. Eventually, R.N. became so depressed that she developed suicidal thoughts, at one point telling an adult that she believed that going to Heaven would cure her autism.

41. In the spring of 2017, R.N. wrote a suicide note. Her parents reported this to one or more employees of Defendants, who downplayed it and told them that R.N. had written the

note for attention. When the parents showed the suicide note to R.N.'s teacher, she called it an example of "Classic R.N. overreaction."

42. Unfortunately, this cavalier and dismissive attitude was typical of Defendants' response to the bullying of R.N. which was occurring—and being reported to Defendants—on a regular basis.

43. Beyond just ignoring it, employees of Defendants blamed R.N. or her parents for her being bullied and questioned why she was allowed to use social media.

44. Defendants' suggestions for dealing with the bullying included providing R.N. a visual cue to "close the door" and pretend it was not happening, defend herself or see the school counselor.

45. In the afternoon of May 15, 2017, after R.N. got home from school and before her parents got home, she attempted to commit suicide by overdosing on prescription medications. After R.T. got home that evening, R.N. said that she wanted to take a shower to get the bullies out of her head, then told R.T. that she had done something to make herself feel better about the bullying.

46. R.N. told her parents that she "had a headache from all the things the bullies said to her," and that she had taken "medicine" to make her headache go away. When R.T. noticed that R.N. appeared to be under the influence of something, she asked her what medicine she had taken then called 911.

47. R.N. was transported by ambulance to Franciscan Hospital where she is reported to have told Emergency Department staff "They pushed me at school today." She was later transferred to and admitted as an inpatient at Valle Vista Hospital. Her discharge

diagnoses were Major Depressive Disorder, recurrent, severe with psychosis; Autism Spectrum Disorder; ADHD and Generalized Anxiety Disorder. Her prognosis was fair.

48. The parents sent an email to the school Principal, Dave Beck, in May 2017 asking questions about Defendants' bullying policy. At a meeting on or about May 30, 2017, the Principal told them that the incidents of harassment which had been reported by R.N. were not considered bullying because they did not involve multiple incidents committed by the same student.
49. Mr. Beck told the parents, "You don't understand the definition of bullying." According to him, this conduct did not meet the definition of bullying under Indiana law because they were not "repeated acts or gestures." Apparently, he believed that unless one person engages in identical behavior two or more times, it is not considered bullying.
50. In response to the parents' email, the Principal informed them that Defendants had investigated R.N.'s reports and "found there are no substantiated bullying incidents."
51. On or about May 31, 2017, the parents sent an email to Defendants' Principal, Dave Beck (and copied two other employees of Defendants), asking him to explain Defendants' policy for handling bullying complaints by students and under what circumstances Defendants would notify parents that their child had reported being bullied. The parents specifically took issue with Principal Beck's position that the incidents which had been reported by R.N. did not constitute bullying because they were not "repeated behavior" by the same student. The parents expressed their disbelief at Mr. Beck's position and explained that R.N. had attempted suicide because she was being bullied and this had been reported to employees of Defendants.

52. In response to the parents' email, Mr. Beck sent them copies of Defendants' anti-bullying policy, implying that answers to the parents' questions could be found there. Calling R.N.'s reports instances of "alleged bullying," Mr. Beck then told the parents that Defendants had investigated them and "based on these findings, and the Indiana Code definition of bullying⁶, we found there are no substantiated bullying incidents." He then acknowledged that "inappropriate behaviors" had occurred.

53. Instead of welcoming any questions or feedback or offering to make himself available for a phone call or meeting with the parents to discuss their concerns, Mr. Beck's email closed with the comment "This correspondences [sic] serves as the conclusion of our findings. I want to wish R.N. and family the very best." In other words, this conversation is over.

54. Mr. Beck copied Defendants' Superintendent, David Clendening, on his email to R.N.'s parents.

55. Mr. Beck did not address whether the "alleged" incidents reported by R.N. constitute bullying as that term is defined by Defendants' policies.

56. In June of 2017, another parent sent an email to Jennifer George, Defendants' school counselor, informing her that other students had been making fun of R.N. and told her to "go kill yourself."

57. In or around August of 2017, one or more employees of Defendants reported R.N.'s parents to the Indiana Department of Child Services (DCS), which dispatched a caseworker to the family's residence to interview them. The complaint was determined

⁶ It is unknown whether Mr. Beck is an attorney or consulted one before reaching this conclusion.

unsubstantiated; however, as a result of the DCS investigation, R.N. no longer felt comfortable confiding in school staff.

58. In or around October 2017, R.N. was talking to a friend about her suicide attempt in May.

That friend apparently told another friend who told her grandmother, who informed Defendants. It was after school and Defendants' staff were unable to make phone contact with R.N. or her parents. Defendants did not leave the parents a voicemail message when they were unable to make phone contact with them; however, Defendants did make contact with R.N.'s biological father in Richmond, Indiana. Defendants' school resource officer (SRO) requested that his department have a unit do welfare check on her. Police were dispatched to the family residence, where they discovered R.N. and her sister in no apparent danger of harm.

59. In early April 2018, R.N.'s parents met with school personnel to discuss ways to help her cope with her feelings.

60. R.N. knew another student who used to attend school in Defendants' district. She had also been bullied at school and moved to another district in order to get away from the bullying, but even after she moved, other students continued to bully her on social media. She committed suicide in April 2018 and R.N. went to her funeral. R.N.'s parents hoped that R.N. seeing the friend's body at the viewing would bring home the message that suicide is permanent.

61. One morning in April 2018, R.N. cut herself with a razor because, she said, "the physical pain hurts less than the school pain."

62. During a two-hour session with her private counselor, R.N. described her plan to commit suicide. At one point she talked about shooting herself, cutting, taking pills, hanging herself with a belt or drinking bleach to “wash out the bad thoughts.”
63. She was taken to the Community Hospital North Behavioral Center for evaluation and reported that she wanted to quit school because she did not feel safe or happy there. She was discharged to home with a safety plan.
64. R.N. participated in a social skills group at school. In April 2018, a male student in her social skills group pushed R.N. and threatened to stab her at school. For some reason, Defendants did not report the incident to police. When the parents asked the Principal whether Defendants had filed a police report, she said no. When they asked her why not, the Principal said that the other student would not carry out his threat, that he was a good student and that he had never been in trouble.
65. On April 17, 2018, the parents sent employees of Defendants an email questioning their handling of the incident and asking that the male student not be allowed to sit at R.N.’s table during lunch.
66. Since Defendants did not report the incident to police, R.N.’s parents did so.
67. Franklin police dispatched an officer to the school, where he spoke with R.T. After speaking with school personnel, the officer told the R.T. “this sounds like it was blown out of proportion.”
68. The Principal asked R.N.’s parents if they were comfortable having her continue in the social skills group with the other student, suggesting that they should withdraw her from it if they were not. In response to this suggestion, the parents asked why R.N. should have to leave the group instead of the student who assaulted her. The parents wanted R.N. to

remain in the group and, upon information and belief, the other student was not asked to leave the group. For some reason, Defendants made the decision to keep both students in the same social skills group (which had been staffed with one teacher) and staff it with an additional teacher.

69. R.N. continued to be bullied at school. Her anxiety and depression worsened and her suicidal thoughts persisted.

70. On or about May 2, 2018, R.N. heard two students on the bus talking about a video game character and saying, “If the character was stupid, they would name it ‘Autism’ because people with Autism are stupid” and then they laughed. The parent emailed employees of Defendants asking them to look into it.

71. That same day, R.N. posted comments on Facebook which included: “I’m so sick and tired of people making fun of somebody because they are autistic....I have to deal with this situation almost every day at school. I’m tired of being made fun of. SERIOUSLY. I wish I was accepted for who I am.”

72. On or about May 4, 2018, R.N. broke a mirror and cut herself on the arm, prompting her parents to take her to the Community Hospital behavioral unit where she presented with self-inflicted cuts on her forearm, complaints of depression and anxiety leading to suicidal thoughts and self-harming behavior. At the hospital, she told staff that she wanted to “cut [herself] and bleed out” and was admitted as an inpatient.

73. R.N. gave a history of three prior suicide attempts and her complaints of being bullied at school are documented in her chart: “Pt states that the catalyst for her recent thoughts was being bullied at school.” A nurse wrote a notation that R.N. “perseverates over a boy who bullies her for being autistic.”

74. R.N. said that she wanted to hurt the person at school who bullies her because of her autism. Her discharge diagnoses were Major Depressive Disorder and an unspecified anxiety disorder.
75. The ongoing bullying which R.N. experienced at school and on the bus was so pervasive and severe that it created a hostile and unsafe environment and instilled in R.N. a fear of going to school.
76. R.N. has the right to attend school in an environment free from hostility towards persons with disabilities and the hostile environment which she experienced at Defendants' school(s) deprived her of educational opportunities and benefits.
77. The bullying was more than isolated or sporadic incidents; it was serious, ongoing and continuous and had the systemic effect of denying R.N. to educational programs and activities.
78. The parents had several meetings with school administrators and staff at which they expressed their concerns about R.N. being bullied. Defendants' employees dismissed the parents' concerns because, according to them, the complained of conduct did not meet the definition of bullying under Indiana law. According to the Principal, "because it wasn't repeated, it wasn't bullying."
79. When the parents complained to school employees about the bullying, the staff refused to take them seriously. Instead of taking reasonable measures to address the parents' legitimate concerns about the bullying which R.N. was being forced to endure at school, school administrators and staff attributed it to her "overreacting."

80. Despite numerous reports that R.N. was being bullied (made by R.N. and her parents), Defendants failed to conduct appropriate investigations into any of the reported incidents and disregarded or discounted R.N.'s version of events.
81. Defendants had actual knowledge that harassment of R.N. based on her disability was so severe and pervasive that it created a hostile environment that deprived R.N. of access to their educational programs, activities and opportunities.
82. When the parents met with school employees on or about 5/14/18 to discuss ways to address the challenges which R.N. was experiencing at school, Defendants suggested that R.N. attend school half days or go on homebound.
83. Defendants' deliberate indifference to the harassment of R.N. was demonstrated by its actions (and inaction), which were clearly unreasonable in light of the known circumstances.
84. On or about January 22, 2019, an article was published in the *Daily Journal* reporting that a mental health survey of students enrolled in Defendants' district revealed that over 80% of respondents saw stress or anxiety and over 73% reported depression.
<http://www.dailyjournal.net/2019/01/22/mental-health-survey-reveals-students-needs/#.XEEd-Ym2Hrvc.facebook>
85. In that article, a representative of Defendants reported an increase in reports of students having suicidal ideation and three student suicides in the last two years.
86. The Board's president is quoted as saying, "Until tonight I never thought about what we are doing and where are our gaps. It's a huge unmet need."

87. The District's Superintendent reportedly said that teachers who work for the district either lack the necessary training to deal with these issues or do not know where to direct students for help.

COUNT I

SECTION 504 OF THE REHABILITATION ACT

88. Plaintiffs incorporate by reference their prior allegations as if fully set forth herein.

89. This claim is brought pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. ("Section 504") and its implementing regulations, 34 C.F.R. § 104 et seq.

90. Section 504 guarantees R.N. the right to participate, along with nondisabled students, in academic, nonacademic and extracurricular activities (e.g., lunch, recess, recreational activities) and services to the maximum extent appropriate to her needs. 34 C.F.R. § 104.34(a), (b).

91. R.N.'s condition substantially limits one or more major life activities. She is an "individual with a disability" as defined by 29 U.S.C. § 705.

92. Defendants receive federal financial assistance.

93. Defendants operate a "program or activity" as defined by 29 U.S.C. § 794(b); namely, provision of educational services.

94. Defendants operated their program or activity on the basis of generalizations, assumptions, prejudices or stereotypes about R.N.'s disability and how it affects her.

95. Students' bullying of R.N. constitutes harassment on the basis of her disability, which interfered with her right to receive an education in an environment free from discrimination.

96. Defendants knew, or were deliberately indifferent to knowing, that R.N. was being harassed on the basis of her disability, yet failed to take proper steps to investigate or otherwise determine what occurred.
97. Defendants knew, or were deliberately indifferent to knowing, that R.N. was being subjected to discriminatory harassment which created a hostile environment sufficiently serious to interfere with or limit R.N.'s ability to participate in or benefit from Defendants' programs or activities; namely, their educational program.
98. Despite this knowledge, Defendants failed to take prompt and effective steps to end the harassment, eliminate the hostile environment, prevent its recurrence and remedy its effects.
99. Defendants discriminated against R.N. solely by reason of her disability in violation of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 et seq. Specifically, Defendants subjected her to a hostile educational environment and deprived her of the opportunity to attend school and participate in their programs or activities.
100. Defendants excluded R.N. from participation in, denied her the benefits of, or otherwise subjected her to discrimination under a program or activity which receives federal financial assistance in violation of 34 C.F.R. § 104(a).
101. By allowing a hostile educational environment to exist at school, Defendants discriminated against R.N. because of her disability.
102. Defendants acted with discriminatory intent or deliberate indifference towards R.N.
103. Non-disabled persons receive the benefits or services for which R.N. is otherwise qualified, but R.N., solely by reason of her disability, was excluded from, denied

participation in or denied the benefits of attending school by Defendants or was otherwise subjected to discrimination by Defendants.

COUNT II

AMERICANS WITH DISABILITIES ACT

104. Plaintiffs incorporate their prior allegations as if fully set forth herein.

105. This claim is brought pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 and its implementing regulations, 34 C.F.R. Part 35.

106. Defendants are “public entities” as defined by 42 U.S.C. § 12131(1).

107. R.N. is a “qualified individual with a disability” as defined by 42 U.S.C. § 12131(2).

108. By reason of R.N.’s disability, Defendants excluded her from participation in or denied her the benefits of the services, programs or activities of a public entity or subjected R.N. to discrimination. Specifically, by failing to take reasonable measures to address the bullying, Defendants subjected R.N. to a hostile environment at school.

109. Defendants acted with discriminatory intent or deliberate indifference towards R.N.

110. Defendants’ actions (and inaction) violate Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132 et seq. (“ADA”).

COUNT III

EQUAL PROTECTION

111. Plaintiffs incorporate their prior allegations as if fully set forth herein.

112. R.N. belongs to a protected class by reason of her disability. She is entitled to attend school in an environment which is not hostile; however, she was repeatedly harassed by other students, in whole or in part, because of her disability. This harassment created a

hostile environment at school and deprived R.N. of educational opportunities and benefits.

113. Defendants knew or should have known that failing to take reasonable measures to prevent R.N. from being subjected to harassment violated her equal protection rights.

114. Defendants had actual knowledge that R.N. was being bullied but turned a blind eye and their failure to act in the face of such knowledge demonstrates their deliberate indifference toward R.N.'s predicament.

115. Defendants' inaction and failure to take meaningful steps to address student on student harassment in their schools represents a widespread custom or practice that has been going on for years.

116. There is no rational basis or legitimate state interest to justify Defendants' inaction in the face of numerous reports that R.N. was being bullied.

117. By their custom or practice of ignoring the bullying and as a result of their inaction, Defendants subjected R.N. to multiple instances of discrimination because of her disability.

118. Defendants' custom or practice of ignoring the harassment of students (particularly disabled students) in their schools is so well-settled that it amounts to a policy which is unconstitutional. As a result of their unconstitutional custom or practice, R.N.'s constitutional rights were violated.

119. Pursuant to their custom, practice or *de facto* policy of ignoring student on student harassment, Defendants subjected R.N. to multiple instances of discrimination because of her disability.

120. Whether Defendants adopted a policy or engaged in a custom or practice which amounts to a policy, its inaction in the face of the ongoing, repeated and severe harassment of R.N. lacks any rational relationship with a legitimate government interest.

121. Defendants' custom, policy or practice does not apply to students without disabilities.

122. Defendants acted with discriminatory intent or deliberate indifference towards R.N.

123. Nondisabled students were not subjected to the same treatment as R.N.

124. Defendants, acting under color of state law, discriminated against R.N. because of her disability by allowing a hostile environment to exist at school. Such discrimination deprived R.N. of the equal protection of the law in violation of the Fourteenth Amendment to the Constitution.

COUNT IV

NEGLIGENCE AND NEGLIGENCE PER SE

125. Plaintiffs incorporate their prior allegations as if fully set forth herein.

126. At all relevant times, R.N. was lawfully upon the premises of Defendants' school or school bus.

127. Defendants owed R.N. common law and statutory duties of reasonable care and supervision of students attending the school and riding the school bus, including R.N.

128. Defendants owed R.N. a duty to protect her from the reasonably foreseeable actions of others.

129. Defendants breached these duties as more particularly described below.

130. There is a history of student-on-student bullying at schools operated by Defendants, including the school(s) which R.N. attended.

131. Defendants knew or should have known the nature and extent of the bullying which was occurring in their schools.

132. Defendants failed to take reasonable measures to prevent R.N. from being subjected to bullying when she was at school, school-sponsored activities or on the school bus. This failure directly and proximately increased the risk of harm to R.N. and includes failing supervise students in their charge; failing to devise, implement and enforce an appropriate anti-bullying policy and procedures; failing to intervene when students are bullied; failing to properly investigate reports of bullying; and failing to take appropriate disciplinary action against the perpetrators.

133. As a direct and proximate result of Defendants' negligence, Plaintiffs have sustained damages, specifically pain and suffering. Specifically, R.N. suffered physical injuries and emotional distress and R.T. incurred medical expenses on behalf of R.N. as a result.

134. Defendants knew or should have known that R.N. was being subjected to harassment and bullying by other students at school. The students who harassed R.N. were subject to Defendants' disciplinary authority.

135. Defendants' negligence, failure to investigate the harassment of R.N. and failure to take disciplinary action against the perpetrators created a hostile environment at school, made R.N. more vulnerable to harassment at school and/or caused R.N. to be subjected to harassment.

136. To the extent Defendants violated federal and state statutes and such statutory violations proximately caused or contributed to harm R.N., Defendants are liable for negligence *per se*.

137. Defendants' negligent acts or omissions caused R.N. personal injury and emotional distress.

RELIEF REQUESTED

Plaintiffs request the following relief:

138. Judgment in their favor and against Defendants, jointly and severally;

139. Compensatory damages;

140. Reasonable attorney fees pursuant to 29 U.S.C. § 794a(b), 42 U.S.C. § 12205 and 42 U.S.C. § 1988(b);

141. Costs of this action; and

142. All other relief reasonable in the premises.

Respectfully submitted,

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